

principle creditor.

3. On September 20, 1985, the Court entered an order confirming Debtors' Chapter 13 plan.

4. On December 5, 1985, the Chapter 13 Trustee filed a petition to dismiss, asserting that the Debtors were in default under the terms of the plan.

5. On December 13, 1985, Debtors filed a modified Chapter 13 plan. This modified plan provided for payments of \$50.00 each week for 60 months. Holders of unsecured claims were to be paid 30 percent.

6. On December 26, 1985, the Court entered an order denying Trustee's petition to dismiss, stating that the Court approved Debtors' modified Chapter 13 plan.

7. Debtors are \$2700.00 in arrears on payments under their modified Chapter 13 plan and desire to continue payments under the confirmed modified plan.

DISCUSSION

Chapter 13 Trustee asserts that Debtors' Chapter 13 plan has exceeded five years and Debtors are in arrears on their Chapter 13 plan in the amount of \$2700.00. Trustee therefore asserts that Debtors' Chapter 13 case should be dismissed. 11 U.S.C. §1307(c)(6) provides that the Court may dismiss a Chapter 13 case if there is material default by the debtor with respect to a term of a confirmed plan. 11 U.S.C.

§1322(c) provides:

- (c) The (Chapter 13) plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.

11 U.S.C. §1322(c), which sets a maximum length which can be approved for payments under a Chapter 13 plan, does not provide a basis to dismiss a Chapter 13 plan whose payments extend past the five-year period. See In re Black, 78 B.R. 840, 842 (Bankr. S.D. Ohio 1987).

However, in order to cure the arrearage of \$2700.00, the term of the plan would have to be extended over a year with plan payments of \$50.00 each week. This constitutes a material default by Debtors and falls within the provisions of 11 U.S.C. §1307(c)(6).

ORDER

IT IS ACCORDINGLY ORDERED that Trustee's motion to dismiss is granted and this case is dismissed.

Dated this 16th day of January, 1991.

Russell J. Hill
U.S. Bankruptcy Judge